UNITED
NATIONS

CRC

Convention on the
Rights of the Child

Distr.
GENERAL

CRC/C/SR.329
4 October 1996

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD

Thirteenth session

SUMMARY RECORD OF THE 329th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 2 October 1996, at 10 a.m.

Chairperson: Mrs. BELEMBAOGO

CONTENTS

CONSIDERATION OF REPORTS OF STATES PARTIES (continued)

Initial report of United Kingdom Dependent Territories: Hong Kong

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.96-18443 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4) (continued)

Initial report of United Kingdom Dependent Territories: Hong Kong
CRC/C/11/Add.9 and Corr. 1 (English only); HRI/CORE/1/Add.62;
CRC/C/Q/UK(HK).1)

1. At the invitation of the Chairperson, Mr. Wingfield, Mr. Fifoot, Mr. Ng Hon-wah, Mr. Deane, Mr. Leung, Ms. Pun, Ms. Hui, Ms. Ip, Sir John Ramsden, Ms. Foulds, Mr. Wells and Mr. Booth (United Kingdom) took places at the Committee table.

2. Mr. FIFOOT (United Kingdom) said that the great majority of the matters dealt with in the Convention were the direct responsibility of the Hong Kong Government. Furthermore, the Joint Declaration and the Basic Law would ensure that Hong Kong enjoyed a considerable degree of autonomy in the future. The United Kingdom delegation included representatives of the relevant departments of the present Hong Kong administration, who would reply to questions within their purview. He would deal with questions relating to matters for which the United Kingdom was directly responsible.

3. Mr. WINGFIELD (United Kingdom) said that preparation of the report had been an opportunity to take stock of the extent to which effect was being given to the Convention in the Territory. Since health and education were among the best indicators of general well-being in children, Hong Kong's low infant mortality rate of 4.7 per thousand live births in 1995 was noteworthy. Comprehensive medical and health services that were either free or charged at very low rates represented 10.8 per cent of total public expenditure and included a free comprehensive immunization programme for children.

4. Education received 17.5 per cent of the total budget. Full-time education was free and compulsory for all children between 6 and 15 years of age. Ninety per cent of children completed upper secondary education or equivalent vocational training. Eighteen per cent of the relevant age group went on to tertiary education. Grants and loans were provided to university students to ensure that no student would be deprived of education for lack of means. A number of areas where new initiatives were being implemented or were under active consideration to improve the physical and mental well-being of children were also mentioned in the report.

5. The United Kingdom had extended the Convention to Hong Kong in 1994, subject to two declarations and four reservations. Following a review, it had been decided to maintain those measures for the present, since there were continuing local circumstances to be taken into account. For example, juvenile offenders were generally defined in Hong Kong as offenders between the ages of 14 and 21, so that offenders between the ages of 14 and 18 might be detained in institutions together with offenders aged between 18 and 21, but were separated from adult offenders over 21 years of age. Since there were no immediate plans to alter those arrangements, the reservation to article 37(c) was maintained. In the case of article 32, consideration was

being given to introducing regulations on hours of employment of young persons who had attained the age of 15 years in respect of work in non-industrial establishments.

6. Over 13,000 Vietnamese migrants remained to be returned to Viet Nam under the Comprehensive Plan of Action; the number of arrivals had recently been increasing. That continuing problem might hamper the full implementation of the Convention. Secondary education for Vietnamese migrants, which had been covered in the list of issues, was continuing with International Social Services providing teachers and textbooks and the Hong Kong Government contributing to the costs involved. A further recent development had been the agreement of the Joint Liaison Group that the provisions of the Hague Convention on the Civil Aspects of International Child Abduction should be extended to Hong Kong with a view to its continued application after 1 July 1997.

7. Hong Kong law was consistent with the Convention in that the age of majority, when the individual attained full legal capacity and the right to vote, was 18. The limiting age for the protection of children was also 18. However, in other areas such as detention of young offenders, consent to marriage, criminal responsibility and compulsory education were subject to other limiting ages.

8. Compliance with the Convention was ensured by the rule of law, supervised by an independent judiciary, by the enactment of the Bill of Rights Ordinance, by a wholly elected legislature and by an independent and vigilant press. Consequently any Government act or omission with human rights implications was examined by the media and the legislature and, in the last resort, by the courts. The successful implementation of the Convention required the compliance of the community as a whole; active efforts were being made to promote such community involvement.

9. The initial report would also be the last before sovereignty over the Territory reverted to China on 1 July 1997. Matters relating to the continued application of the Convention to Hong Kong, including reporting arrangements, were being discussed between the United Kingdom Government and the Chinese Government through the Sino-British Joint Liaison Group.

10. Mr. KOLOSOV said that one purpose of the Committee's dialogue with reporting States was to make recommendations for further action. Since the transfer of sovereignty over the Territory to China would take place during the next reporting period, he asked to what authority the Committee's recommendations and suggestions should be addressed.

11. Mr. HAMMARBERG welcomed the fact that secondary education was continuing for Vietnamese migrants and the provisions of the Hague Convention would be applied in Hong Kong. He asked what proportion of its time the Joint Liaison Group gave to the discussion of children's issues. The Committee's aim was to encourage the withdrawal of reservations to the Convention, in view of the fact that the instrument had been unanimously adopted by the United Nations General Assembly after lengthy consultation; furthermore, the World Conference on Human Rights held in Vienna in June 1993 had recommended that the States parties to the Convention should review their position on reservations to it.

The fact that exceptions to the standards agreed to by the world community still existed pointed to a need for an in-depth discussion of the problem in order to find a solution.

12. Article 4 was a major provision of the Convention. It was therefore essential that the administrative authorities of a State party should be so organized as to ensure that the Convention was fully implemented in practice. Three criteria governed that ability. The first was that there should be an effective coordination mechanism to ensure that all bodies involved contributed effectively to implementation. A fragmented approach meant that different aspects of the rights of the child were handled by different bodies or structures, thus precluding a coordinated and comprehensive approach to children. How was Hong Kong dealing with that aspect? The second criterion was that an independent authority should be made responsible for monitoring the performance of the various bodies and structures implementing children's rights. Many countries had given that independent monitoring role to ombudspersons or to a commission or commissioner. Had any consideration been given by the United Kingdom to establishing a public monitoring structure that would serve as an official complement to the watchdog efforts of the media? The third criterion was that the authorities should have a constructive approach to non-governmental organizations working in the field of children's rights. Many Governments had established a special forum to provide an arena for such discussion. It was noted that a number of non-governmental organizations had not been very happy with the level of consultation with the Hong Kong authorities when the report was being prepared. Perhaps some thought might be given to improving matters in that regard.

13. Some legislation such as the Parent and Child Ordinance, 1994, had been introduced in Hong Kong with a view to implementing provisions of the Convention, but it did not appear that a comprehensive review of all legislation had taken place, as had been done by many other Governments in the same circumstances. Perhaps that approach might be reconsidered in the light of the innovative aspects of a number of the principles embodied in the Convention.

14. He asked what efforts were being made to ensure that persons who worked with children on a daily basis, such as doctors, nurses, social workers, teachers and others, received adequate training in the latest thinking on the rights of the child.

15. Mrs. SARDENBERG asked whether any surveys had been carried out in Hong Kong to review the situation of children in society and how they were perceived and treated by the family, at school and by the authorities. The Convention was concerned that a comprehensive view of the child should be created. In relation to the written reply to question 4 of the list of issues, she asked why it had been decided that 15 to 19 should be the age group for the collection of statistics. Statistics for the age groups below 18 had to be compiled to allow the problems of the child to be dealt with in an integrated way so that comprehensive policies could be drawn up.

16. The report provided much factual information, but had dwelt very little on areas in which difficulties were being experienced. In view of the fact that non-governmental organizations had not been widely involved in the

preparation of the report, she asked what the relationship of the authorities was to the non-governmental community and to what extent that community was given the opportunity to make suggestions for the formulation of policies and strategies relating to children.

17. Mrs. KARP stressed that the general public perception of the child was important because it also affected the way the professions dealing with children, such as medicine, education and the law, regarded and treated them. She asked whether, in the general cultural background of Hong Kong, the child was perceived by the general public as a human being with individual rights entitled to express individual views rather than as property or as a person requiring protection.

18. Mr. MOMBECHORA, noting that there were a number of ethnic groups living in Hong Kong, the largest of which was the Cantonese community, asked whether any guarantees were in place to ensure that, following the transfer of sovereignty, the cultures of those groups would be respected and permitted to follow their own lines of development.

19. Mr. FIFOOT (United Kingdom), replying to Mr. Kolosov, said that any suggestions and recommendations made by the Committee at the present meeting would necessarily have to be submitted to the United Kingdom, as the authority currently responsible for the Territory. However, there would be a continuing administration that would span the period of transfer of sovereignty and would be expected to bring to the attention of the new sovereign power any outstanding issues that had implications beyond 1997. The issue of the Convention and the reservations to it were already subjects of discussion in the Joint Liaison Group.

20. Mr. WINGFIELD (United Kingdom) said that the United Kingdom continued to consider that the establishment of an independent monitoring commission would not be in the public interest. Responsibility for the various areas covered by the Convention was so broad that the establishment of a single body would detract from the responsibilities of the authorities directing various areas of policy. In education, for example, it would not be considered beneficial to separate the issues of child education and adult education.

21. Non-governmental organizations working in the area of children's rights were represented on almost all consultative bodies and thus had an opportunity to advise the Government on policy matters or draw its attention to areas that were being overlooked. Such constructive dialogue was valued by the Government.

22. The demand for review of various aspects of legislation in Hong Kong was very great at the present time. It had therefore been considered more productive to confine efforts to identifying areas of the law that required substantial reform. The Children's Act, for example had dealt primarily with the relationship between parent and child rather than covering every area dealt with by the Convention. Two areas where legislative reform was currently under way were adoption and the custody of children.

23. The best interests of the child formed a large part of the training programme for both doctors and social workers, especially with regard to the identification of child abuse, which teachers of course were also concerned with and trained to identify.

24. No specific study had been undertaken of basic attitudes towards children, either in families or on the part of the Government, but any recommendation to that effect would be taken into account. His impression was that the people of Hong Kong regarded their children very highly and certainly not simply as property. The Government regarded them as persons with rights of their own as well as in the light of their relationships with parents. The report made it clear that, should such a relationship seem to have broken down, the Government would intervene if it appeared to be in the child's best interest that he should be removed from the family, or that the relationship should be supervised.

25. Breaking statistics up into five-year spans had no special significance and figures could be provided with a cut-off point of 18 years. The need for such a cut-off point had not been felt hitherto, given that the interest of the subjects of the statistics did not cease at the age of 18.

26. Broadly speaking, the courts adhered to the principles of the Convention. Professionals employed in the system had usually been trained in the United Kingdom and had the same standards as lawyers and judges there.

27. As far as possible cultural differences between Hong Kong and the rest of China were concerned, he emphasized that the whole concept of "one country, two systems" was that Hong Kong should continue to have its own system of laws. For example, the International Covenant on Civil and Political Rights would apply in Hong Kong after 1997 even though China was not a party to it. There was no reason to believe that there would be any conflict between the culture of Hong Kong as it existed at the moment and the culture of the mainland. Indeed, everything suggested the opposite.

28. Mr. HAMMARBERG said that it would be interesting to know how the Committee's concluding observations would be conveyed and in what forum they would be discussed. Would they be presented to the Joint Liaison Group? What issues were already being discussed in that Group in the light of the Convention? Had there been any discussion with the Chinese on the interesting and legally complicated issue of reservations to the Convention?

29. Doubt had been expressed that an independent monitoring body could be helpful, given the very broad area covered by the Convention. He would note, however, that a number of countries were trying to establish systems for the monitoring of the performance of the executive branch in respect of the rights of the child as set forth in the Convention. Monitoring and actual responsibility for the implementation of the Convention were two different things and the point of a monitoring body was that it should be a separate organ which would report publicly what it had found from the point of view of implementation. He suggested again that serious consideration should be given to establishing some kind of independent monitoring system.

30. With regard to the dialogue with NGOs, some thought might well be given to the possibility of holding continuous consultations, along the lines already adopted in many countries. It was important to see the Convention as a check-list from which every country had something to learn. Even the most advanced countries could profit from the experience of other parts of the world. Coordination, independent monitoring and opening the door to civil society were all areas in which improvements could be made in every country.

31. The Convention contained no instructions on how its provisions were to be reflected in national legislation, but simply required that there should be such a reflection, to be effected by various means. It was a good idea, when a country ratified the Convention, for an overall review to be made of all relevant pieces of legislation to see if they were in keeping with it. The various Ordinances which had been referred to had been produced at different times and it might therefore be useful to see whether they were coordinated among themselves as well as in relation to the Convention. The four great general principles of the Convention, including the best interests of the child, should permeate all the relevant legislation. The United Kingdom's own Children's Act need not necessarily be taken as a model. Another solution could be chosen, but a comprehensive review should be made even if it was followed by a continuation of the piecemeal approach already described. The purpose of the review was to see what gaps there were and what problems needed to be faced.

32. Mrs. KARP said that a review of the kind recommended in the case of the Convention had been carried out after the adoption of the Bill of Rights Ordinance. The Convention constituted a bill of rights for children and should be regarded in the same way. In the special situation of Hong Kong, it was important to provide a legislative environment for the future and an effort to ensure that the Convention was properly reflected in the legislation would help to smooth the transition.

33. She asked whether the efforts to integrate the Convention into school curricula and the campaign to make children aware of it had been evaluated at all. Were teachers involved in the campaign and had there been any discussion of problems experienced by them in that connection? What were the interim conclusions regarding the campaign's results? She would like to see a copy in English of the special school kit.

34. She also asked what degree of independent capacity was enjoyed by children to bring requests for the redress of any infringement of their rights before the courts. Could a child apply to the courts without the consent of his parents and could he sign a power of attorney to enable a lawyer to bring the request on his behalf? Had any court decisions been handed down in that connection?

35. Mrs. EUFEMIO asked whether any statistics were available concerning the implementation of children's civil rights and freedoms, freedom of expression, association, the right to appropriate information, and so forth. Those rights and freedoms were a new departure in the field of child welfare.

36. She would also like some figures regarding the extent to which the Convention had been publicized. Had the number of copies printed been enough for the whole population of parents and children? Had a more readable version of the Convention been made available to the public at large? She understood that there had been efforts by the media and some NGOs to make the public aware of the provisions of the Convention. Were the professionals involved, such as teachers and social workers, trained to use statistics or other indicators in evaluating their own performance?

37. Mrs. MASON said that she had been struck by the proliferation of working groups, committees and advisory boards, all directed towards improving the position of children in Hong Kong. In its response to the question about the effectiveness of those institutional arrangements in coordinating the implementation of policies on the rights of the child, the Government had stated that the arrangements resulted in practicable policies which struck a balance between the differing interests. She would like to know how that had been done. Did the various groups collaborate with each other and make joint plans that had an effect on the system as a whole? What body or ministry had overall responsibility for collating all the information available in order to determine whether the system was effective? Was there any duplication of effort? For example, there was a working group on child abuse and another on battered spouses which was also largely concerned with children. How did the two collaborate? Also, given the high value attached to children by the Government and society of Hong Kong, how far did children themselves participate in those various groups? Was there any outlet for the voice of the children?

38. Mrs. SARDENBERG said that it was important for the delegation itself to draw attention to problems and obstacles, which it was difficult to identify on the basis of the report. In respect of basic attitudes to children, for example, she had found no reference to the contribution that children might make to the shaping of society. Was the high regard for children reflected in providing possibilities for them to put forward their own views? The Committee had been told that no surveys had been made so far of the way in which children were perceived and it was important that that should be done. When children were allowed to give their own views, it was possible to identify areas that had not yet been covered.

39. With regard to information and statistics, she asked whether any thought had been given to the possibility of establishing a centralized system with the Convention itself as the point of departure and arrival. The Committee had been studying the systems adopted by different countries in that regard and she would like to hear the United Kingdom delegation's reaction to that possibility. Could the current statistics be updated in the light of the way in which the child was perceived in the Convention? Had any studies and surveys been made of such specific problems as child abuse?

40. Mr. FIFOOT (United Kingdom) said that the Committee would appreciate that, in the context of a change of sovereignty, a wide range of matters had to be discussed. The Joint Liaison Group had a vast agenda covering many elements. One important question among many was that of succession to international obligations and treaties. That topic had been canvassed extensively in the discussions on the Joint Declaration itself and the Liaison

Group was currently discussing the question of reservations to the Convention. The Committee would not expect him to give details of those discussions. Such matters were confidential in all negotiations of that kind until the States concerned were ready to make an announcement. He was therefore not in a position, for the time being, to convey the results of the conversations.

41. As to whether the Committee's recommendations were likely to be discussed in the Liaison Group, it would seem that the Committee's suggestions and comments would essentially be matters that would be taken on board by the individual departments concerned, in the normal course of administration, and reflected in departmental discussions. He did not think that the Committee's observations would necessarily be matters for discussion by the two Governments at the current stage.

42. Mr. WINGFIELD (United Kingdom) said that he had taken note of the distinction between responsibility, on the one hand, and monitoring, on the other, but had nothing to add to what he had already said in that connection. Clearly, any observations by the Committee would be closely studied. The Government very much welcomed the contribution of NGOs and hoped that those organizations regarded their dialogue with it as useful. The Government was ready to consider any complaints they might have.

43. As far as a comprehensive review of the legislation covering the area of the Convention was concerned, his response might have been misleading. Such a review had in fact been carried out, when the extension of the Convention to Hong Kong was being considered, with a view to discovering what legislative and administrative practices might need to be amended. There had thus been a review of Hong Kong law and practice and the view had been taken that the question of introducing new legislation was covered by the Parent and Child Ordinance. Experience with the Bill of Rights Ordinance, whereby the International Covenant on Civil and Political Rights had been made justiciable in the courts of Hong Kong, showed that, no matter how much prior review was carried out, not all the gaps were discovered, so any review had to be a continuing one. The view taken at the time in relation to the Convention might need refinement, but it had been thought then that sufficient amendments had been enacted to cover the position.

44. On the question of publicizing the Convention, he regretted that the school kits referred to were available only in Chinese. The involvement of teachers in the dissemination of those kits had been crucial and was clearly described in the reply to the question in the list of issues. As far as the dissemination of the Convention to the general public was concerned, the text had been distributed to district offices and public libraries and copies of the Convention and the initial report were available free of charge to anyone who requested them. Both the Convention itself and the report made somewhat heavy reading and an abridged illustrated guide had therefore been prepared, 30,000 copies of which had been published. Twenty thousand of those had already been distributed to schools, libraries and voluntary agencies. A cartoon series had also been produced for kindergarten children and advisory information had been broadcast on television. There had thus been

a comprehensive attempt to make children and the general public aware of the Convention and its success could be measured through a comparison with the publicity normally given to Government publications: the normal run of the Hong Kong Government Gazette was 4,300 copies.

45. It was difficult to provide statistics on the enjoyment of rights and freedoms, but the Government conducted biennial civic awareness opinion surveys to assess the public's understanding of its rights and freedoms. A specific question on rights and freedoms would be added to the 1998 survey.

46. Each aspect of the Convention was covered by a policy secretary, who had overall policy responsibility for that particular issue and through whom input from other government departments were channelled. Contributions from NGOs were submitted through advisory committees.

47. Two separate committees, including NGOs, had been established to investigate issues relating to battered spouses and child abuse and they prepared their own statistics. The Hong Kong Government had recognized that coordination between professionals, particularly in relation to child abuse, was an essential element for ensuring the welfare of the child. To that end, the Social Welfare Advisory Committee, which was composed of professionals working in that field, had been set up under the chairmanship of the Director of Social Welfare. In addition, the Government had funded five research projects on child welfare, conducted by various Hong Kong universities.

48. The delegation looked forward to the Committee's concluding observations and recommendations on the potential contribution of children to public consultations through their participation in working groups and committees.

49. Under Hong Kong law, persons under 18 years were regarded as being under a legal disability and could not institute legal proceedings without assistance. The practice in Hong Kong was that a guardian or other independent person, such as the official solicitor, represented the child in such proceedings.

50. Mr. HAMMARBERG asked how broad and systematic the review of the legislation on the Convention's extension to Hong Kong had been. The Committee wanted to determine how much importance States attached to the message and obligations provided for in the Convention, but the report submitted by the Hong Kong Government contained no policy statement on the priority it gave to children. He therefore wished to know what the driving force behind the protection of children's interests in Hong Kong was.

51. Mrs. KARP said that it was very important for Hong Kong to have a holistic perception of the Convention in order to avoid a fragmented approach to its implementation. Integrated legislation on children would enhance the effectiveness of the administrators and professionals dealing with issues relating to children.

52. In view of the complexities of human rights education, had the Government evaluated its public awareness campaigns?

53. Miss MASON requested further information on the dissemination of the Convention and asked whether a system of public discussion had been set up. Which aspects, issues and principles of the Convention had aroused the most curiosity and discussion? Did schoolchildren participate in those discussions and, if so, what were their reactions?

54. Mr. WINGFIELD (United Kingdom) said that the review of the conformity of domestic legislation with the Convention had been conducted internally, under the auspices of the Attorney-General's Office, but the results of that review had not been published. There had also been no evaluation of the impact of publicity campaigns or public discussion of the Convention, but a survey would be conducted to determine the level of public awareness and acceptance of the provisions of the Convention.

55. Mrs. KUFEMIO said that data collection and the formulation of indicators were useful in monitoring the implementation of the individual articles of the Convention. Did Hong Kong plan to carry out studies on the formulation of indicators?

56. She also asked whether the data gathered in biennial surveys were broken down in such a way as to obtain information specifically relating to children and the protection of their rights.

57. Mr. KOLOSOV said he was concerned that the Convention might no longer be applicable to Hong Kong after July 1997, when Hong Kong would be subject to the jurisdiction of China. That concern was based on a provision of the Joint Declaration which stated that international instruments would be applicable to Hong Kong only after a special decision to that effect had been taken by the Chinese Government. He did not believe that the United Kingdom Government would be able to follow up on the Committee's concluding observations and recommendations in the period before the takeover of Hong Kong by China. He therefore wondered whether it was still possible for the Governments of the United Kingdom and China to negotiate an arrangement to ensure that the Convention was applicable to Hong Kong after July 1997.

58. The CHAIRPERSON invited the Committee to ask questions about the sections of the list of issues entitled "Definition of the child" and "General principles".

59. Mr. HAMMARBERG said that, although the Convention did not specify the age of criminal responsibility, the age limit in force in Hong Kong was very low in comparison with the majority of States parties to the Convention. He wondered whether the Government had considered a review of that age.

60. Mr. MOMBESHORA said that he would like information on reports of discrimination against mentally and physically handicapped persons in education, employment and the provision of services and against women in employment and salary-related issues. He asked what protection was provided for those vulnerable groups and whether persons found guilty of discrimination were prosecuted as a matter of routine or only in isolated cases.

61. Mrs. KARP asked whether Hong Kong legislation stipulated a minimum age for the admissibility of evidence given by children. Were there any

conditions of corroboration that affected admissibility and what implications did they have in cases of domestic violence and sexual abuse?

62. She asked whether medical doctors were reluctant to treat young adults, out of fear that parents might bring legal action against them. To what extent were the courts involved in such cases? Was there any protection for children against unethical medical professionals and was there a monitoring system to guide them in their choice of a doctor?

63. Mrs. SARDENBERG said that, although Hong Kong's indicators for literacy were very high, there was a discrepancy between the literacy rates of men and women. She asked the delegation to explain why that was so and whether any specific measures had been taken to bridge the gap.

64. She requested information on the mandate of the Commission on Equal Opportunity, the prospects for the promotion of women their representation in Hong Kong's administration and their participation in decision making. She wished to know why there was a problem of suicide among girls and whether the Government had made any effort to deal with it.

The meeting was suspended at 12.10 p.m. and resumed at 12.15 p.m.

65. Mr. FIFOOT (United Kingdom), replying to the question raised by Mr. Kolosov, said that, at present, matters which were the concern of the Convention were the direct responsibility of the Hong Kong Government and it was the Hong Kong Government's legislative and administrative processes which gave effect to the Convention's provisions. He did not expect that that situation would change very much with the transfer of sovereignty because the matters dealt with in the Convention fell within the areas which the Joint Declaration had declared to be within the autonomy of the Hong Kong Special Administrative Region. It was likely that, in the administration that would succeed the current one, the same department, probably staffed by the same persons, would be responsible for considering the Committee's recommendations.

66. He pointed out that China was in fact a party to the Convention, although not to other human rights conventions, and the discussions currently being held were based on the assumption that China would continue to implement the Convention in Hong Kong as well as in its other territories.

67. Mr. WINGFIELD (United Kingdom), replying to Mrs. Eufemio, pointed out that, whereas statistics on the extent to which a child enjoyed freedom of speech would be extremely difficult to compile, it would be easier to conduct a survey on attitudes about whether or not the Convention was affecting freedom of speech and the Government in fact planned to add a question on that subject to the civic awareness surveys conducted every two years. As stated in the report, the dissemination of the Convention was ensured by providing copies of the text free of charge to all those who requested them.

68. On the point raised by Mr. Hammarberg, he was not able to say immediately how the cases in question had been disposed of, but would provide an answer later in the session. On the issue of criminal responsibility, a child could be prosecuted only if the prosecutor could prove that it had been aware that its act was seriously wrong and not merely mischievous; any doubt on that

score would be to the child's benefit. Unfortunately, statistics showed that there had been a number of cases in which young children had been charged with crimes.

69. On discrimination, there was some overlapping between the Bill of Rights Ordinance and the Convention, but the former was binding only on the Government and other public authorities and did not affect the private sector. The Disability and Sex Discrimination Ordinances, on the other hand, did apply generally in Hong Kong, but, since they had only just entered into force, it was too early to say what effect they were having or to provide any examples of how they operated in practice.

70. Mrs. Karp's question on the minimum age for giving evidence was answered by paragraph 36 of the report, which stated that the evidence of a child under 14 years of age should be given unsworn and that corroboration from other material evidence was not necessary for a conviction. In practice, children as young as five years of age had given evidence in sex abuse cases, but measures had now been taken to ensure that the privacy of such children was protected.

71. It was very difficult to provide general answers about the consent of a child to medical treatment because the extent to which a child's consent would be acceptable would largely depend on the seriousness of the medical procedure involved. There was a natural reluctance on the part of doctors to operate on a child without the parents' consent, partly because, if the operation went wrong, the fact that it had been conducted without valid consent could lead to a civil claim. The courts could be asked to intervene either when there was no one to give consent or when parents refused consent in cases where an operation was deemed essential to prevent death or serious harm to the child. Such a procedure came within the wardship jurisdiction of the High Court and an order authorizing the operation could be obtained from a judge within a matter of hours.

72. In reply to the question on discrepancies in literacy rates, he explained that the population of Hong Kong consisted mainly of persons of Chinese origin, some 64 per cent of whom had been born there and some 34 per cent of whom had come there from China. The discrepancy might have arisen not so much because of defects in the Hong Kong educational system as because many of those now of adult age had come to the territory from China. The rates quoted had not been broken down by age and he would suspect that a disproportionate number of women of 65 years and over were illiterate simply because of the attitudes to the education of girl children which had prevailed 50 or 60 years before.

73. Again, the Equal Opportunities Commission had only just been established and it was too early to expect it to show results. However, he pointed out that the post of Chief Secretary, the highest in the administration below the Governor, was in fact occupied by a woman and women were already well represented in responsible positions in the civil service and in the professions.

74. Mr. KOLOSOV thanked the delegation for the explanations given, but said they did not allay his concerns. According to the Presidential Decree, the

Chinese Government would be responsible for foreign affairs relating to the Hong Kong Special Administrative Region, which meant that China, not Hong Kong, would be reporting to the Committee in the year 2001. The implementation of the Convention in Hong Kong would be subject to the agreement of the Chinese Government. In the absence of that agreement, it might well be that China's report would contain no information on Hong Kong on the pretext that no decision had been taken on whether or not the Convention applied to it and all the discussions now taking place would have been a waste of time. Although Hong Kong might feel morally bound by the Committee's recommendations, legally, it would not be under any obligation to implement them and the Committee would not be entitled to obtain any additional information in the interim.

75. There was still time, through the Joint Consultative Liaison Group, to negotiate with the Chinese Government to persuade it to recognize the Convention's applicability to Hong Kong and he urged the United Kingdom Government to make every effort to ensure that those negotiations were successful.

76. Mr. FIFOOT (United Kingdom) said the United Kingdom Government had entered into an agreement with the Chinese Government which it hoped would be carried out in good faith. As he had already pointed out, under that agreement, the issues covered by the Convention fell within the high degree of autonomy enjoyed by the Hong Kong Special Administrative Region and he expected that would be the case after July 1997 and would continue to be the case when the next round of reporting to the Committee took place. Negotiations now being held with China on the question of reservations were based on that understanding.

77. The principle underlying China's relationship with Hong Kong was to be that of "one country, two systems" and it was therefore likely that there would be two systems in a number of areas of legislation after 1997. Any report by China on its implementation of the provisions of the Convention should, if made in good faith, provide for or give effect to the concept of "one country, two systems". That was his delegation's expectation of how the agreements entered into would apply.

78. The CHAIRPERSON said the Committee hoped the delegation would bear in mind the concern expressed on the matter and that, following negotiations in the Liaison Group, arrangements could be made to guarantee that the Committee's recommendations were implemented in Hong Kong.

79. Mr. HAMMARBERG said that, in his view, the age of criminal responsibility set by Hong Kong was too low. Although it was stated that, for children between 7 and 11, there would be an assessment of whether the crime committed was understood by the child to be seriously wrong, that was an unsatisfactory solution. The mere fact of having to go through such an assessment procedure was burdensome for a child of such a young age. Even cases where the child was aware that its action was wrong might well reflect the fact that it was not in full control of its situation. Very young child offenders should be seen more as victims than as culprits, since statistics showed that almost all came from difficult family backgrounds. It was misleading to speak of a "voluntary intention" to commit crime in a child of that age. The

overwhelming majority of countries had set the age of criminal responsibility much higher, and even 14 was considered low. He suggested that that aspect of the penal law should be reviewed.

80. The Committee had appreciated the explanations about the risk of discrimination against children born out of wedlock, but there was still one problem. In the case of a child born to an unmarried couple, where the mother had no residence permit, the residency status of the child would be in doubt. Was that problem being dealt with?

81. He had been pleased to note that the concept of the best interests of the child had been enshrined in certain ordinances even before the Convention had been made applicable to Hong Kong and that legislation on adoption was now being reviewed in order to incorporate it. However, that concept should not be viewed merely legalistically, but should be a primary consideration in all actions affecting children. It was not always easy to define what was in the best interests of the child, particularly where those interests might conflict with others. The approach taken by some countries was to try to find out, before any decision was taken, what would be the impact on the child of each of the various options. Had the Government analysed the implications of article 3 of the Convention in that regard?

82. Mrs. KARP asked how the concept of the best interests of the child was applied in practice in the case of Vietnamese asylum-seekers. As she understood it, the problem was chiefly a budgetary one.

83. Mr. WINGFIELD (United Kingdom) said the requirement that the prosecutor should prove that the child was aware that its action was seriously wrong applied up to the age of 14, and not only up to 11. At present, no review of the age of criminal responsibility was contemplated, but his delegation would take careful note of the Committee's concerns on the matter.

84. The status of illegitimate children in relation to right of abode in Hong Kong derived indirectly from the British Nationality Act of 1981, under which a child born out of wedlock derived nationality from the mother and not the father. If the mother at the time of the child's birth was not ordinarily resident in Hong Kong, the child did not acquire citizenship or right of abode in Hong Kong.

85. It was very difficult to assess after the event the extent to which an actual decision had been in the best interests of the child, although the courts were enjoined to ensure that that was made a paramount consideration. It was essentially a matter of judgement on the part of the court, social workers and parents. On the question of Vietnamese children, it was generally recognized that the arrival in Hong Kong of migrants from Viet Nam gave rise to many problems, and not only budgetary ones. If children were perceived as having the right of free access to Hong Kong, more Vietnamese parents were likely to put unaccompanied children on boats bound for the Territory. In such cases, the Government relied on the advice of UNHCR and the High Commissioner's recommendations were taken extremely seriously.

The meeting rose at 12.55 p.m.